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# CHAPTER VII

## PARENTS' OPINIONS ABOUT THE GUIDELINE

### 1: BACKGROUND TO THE FOCUS GROUPS

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Parents play an important role in any review of the child support guideline because they are directly affected by how the guideline is applied by the court to calculate a child support order in their case(s). Although it was realized that parents may not be conversant about all the guideline's provisions, it was important to learn what problems they had using the guideline to establish a support order, what issues they faced paying/receiving support, and what recommendations they had for changing the guideline that would make it easier to use, more equitable in its outcomes, and yield support orders that were in the best interests of the children.

In order to capture this information, the study team conducted several focus groups and personal interviews with parents either in person or by telephone. This chapter presents findings from these data gathering activities. The qualitative information from this effort was meant to supplement the more quantitative information captured from the survey of guideline users. Findings from that survey are presented in Chapter VI of this report.

#### Methodology

The purpose of the discussions with parents was to gather a broad range of opinions about the guideline and ideas for change, and explore those opinions and ideas in sufficient detail to understand them. In short, this was not an effort to collect information from a representative sample of parents with support orders. It was instead an effort to gather detailed qualitative information about selected guideline issues.

Focus groups are ideal for capturing this kind of information. Their primary strength is that more than any other method, they can elicit unanticipated responses, allow the investigator to probe or follow up on responses for clarification or depth, and help group members shape and refine their thinking as they talk with others about a shared concern. For parents that were not able to attend the focus groups, personal interviews were conducted with those that could be reached. Like focus groups, personal interviews allowed for the exploration of concerns and ideas in greater depth than through the survey that was administered to guideline users. However, personal interviews have a disadvantage relative to focus groups in that they do not provide an opportunity to share the individual's ideas with a larger



group or to explore some of the underlying issues and detail that a group setting can provide.

Three focus groups of parents were conducted: one in the San Francisco Bay area and two in San Diego. The groups were somewhat different in the strategies used to recruit parents, the size of the groups, and the backgrounds of parents who participated. Thus, the approach that was used in each site to recruit parents for the groups and the characteristics of the parents who participated are described below.

#### *San Francisco Bay Area*

The original plan was to conduct four to six discussion groups of about six people each; half would be composed of obligors and the other groups would be composed of obligees. Ideally, the discussions would occur in places already familiar to many of the participants; facilities housing the Family Support Divisions of the local District Attorneys' offices or the Family Law Facilitators.

In general, the questions for the focus groups were designed to learn:

- ✓ How well informed parents are about the child support guideline,
- ✓ How fair they consider the guideline to be,
- ✓ How familiar they are with potential sources of help around child support issues,
- ✓ How important they think representation by private counsel is in support matters,
- ✓ What experiences they have had in establishing support orders without court involvement, and
- ✓ The extent to which they think support orders conform to the guideline.

The first step in recruiting people for the focus groups was to introduce the project and investigator to the district attorneys and facilitators in six San Francisco Bay Area counties (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara) and request their assistance. Specifically, they were asked to distribute some material the project prepared to English-speaking parents who, within the preceding year or two, had been involved in establishing a child support order.

About 95 recruitment envelopes were sent to offices of the four facilitators and two district attorneys who agreed to help in the recruitment process. Another eight to ten recruitment packets were sent to a retired family law attorney recommended to the evaluator by the chairperson of the Family Law Section of the Alameda County bar Association. Efforts to locate and contact advocacy groups or individual advocates were not productive.

Each recruitment envelope contained (a) a letter from the evaluator describing the project and what participation would entail, as well as assurances of confidentiality;

(b) a response form; and (c) a self-addressed, stamped envelope for return of the response form if the recipient wanted to participate or wanted more information. The 100+ recruitment packets yielded responses from 16 people: five women, ten men, and one person whose name did not indicate gender. Eight of the 16 and another person referred to the evaluator through the California Judicial Council participated in the evaluation. Because these few people included both obligors and obligees and they were residents of four different counties, it was not feasible to limit the data collection to focus groups. Thus, some people were interviewed individually, either by telephone or in person.

It was not possible to determine a response rate to the recruitment effort because it is not known how many recruitment packets reached potential participants. The fact that more men than women responded and participated was unusual in that women typically are more likely to respond positively to invitations to participate in research. The gender distribution here may reflect the fact that more facilitators (whose clients are disproportionately obligors) than district attorneys (who have more contact with obligees) agreed to help recruit. It also may be that the child support guideline is of greater concern to men than women.

#### *San Diego*

The Judicial Council and a local parent advocate organization, the Coalition of Parent Support (COPS), assisted in recruiting parents to participate in the group. COPS sent letters to and called parents on its membership database to recruit participants. Two people who could not attend the focus groups asked if they could share their opinions in a telephone interview and they were accommodated. Altogether, 28 people attended the focus groups and telephone interviews were held with two people.

The following protocol was used to conduct the focus groups:

- ✓ Each group lasted from 2 to 2½ hours.
- ✓ The groups included a mix of men and women. Most of the participants were noncustodial parents. However, there were also a few custodial parents; wives, friends and parents of noncustodial parents; family counselors; and others.
- ✓ A short survey was administered to people who attended the focus groups to capture some background information. Responses were voluntary and not everyone completed a survey.
- ✓ The information that was provided to the participants included: (1) some background information about the study, (2) the objectives for the focus groups, (3) the confidentiality of answers, and (4) ground rules for the discussion (e.g., respect each other's opinions, limit your time to allow everyone to talk, be honest/candid).



- ✓ A list of questions was available to address with every group, but each group was somewhat different and no group discussed every issue on the list.

In the first focus group, it was clear that not all participants had a clear understanding of the guideline and the factors the guideline uses to establish a support order. Thus, at the second focus group, the discussion began with a brief overview of the guideline. Some case examples that one parent had prepared to illustrate the impact of the guideline on the income transfer between the parents were distributed.

## **Background of Participants**

### *San Francisco Bay Area*

Two of the participants were women, obligees, and custodial parents of children whose fathers play little or no role in their lives. Both are women of color and stably employed in lower middle-class jobs. One was interviewed in her home and the other was interviewed in the evaluator's office.

Of the seven men who participated in the evaluation, five were obligors, one was an obligee, and the other was both an obligor and obligee. Their involvement in the lives of their children ranged from infrequent visits with children who are out of state to full-time custody. Six of the men are stably employed and the seventh works seasonally when able. Their occupations range from unskilled work to professional level positions, and all are Euro-American. Three of the men participated in a focus group that met in the local district attorney's facilities. A telephone interview was conducted with one man who was not interested in participating in a focus group, but wanted to contribute his opinions about the guideline. Three face-to-face interviews were conducted, which took place in a conference room at one man's place of employment, in another man's office, and in a conference room in a county law library.

### *San Diego*

Participants were overwhelmingly noncustodial parents, which had an impact on their comments and the recommendations they made for improving the guideline. A profile of the participants, based on their majority responses to certain survey questions, showed the following:

- ✓ A majority of participants (56%) said the amount of their support order was more than they expected.
- ✓ Only a simple majority (50%) believed the judge hearing their case followed the guideline in establishing the support order.

- ✓ A majority (56%) did not believe the other parent reported his/her income correctly at the time the support order was established.
- ✓ Almost 90 percent of participants believed the support amount was very unfair to them, but a majority believed it was somewhat or very fair to the other parent.
- ✓ In addition to the basic support amount, a majority of participants (69%) said they also were paying for medical insurance and/or child care.
- ✓ Somewhat more than a third of the participants (36%) reported seeing their children at least once a week. The few respondents who were not seeing their children at all typically attributed this to the custodial parent's denial of access.
- ✓ Three quarters of participants (75%) said they had private attorneys help them establish their support order.

Although not asked as part of the survey, several parents volunteered that as a result of child support, they had had to declare bankruptcy. They believed this was a common phenomenon among noncustodial parents and encouraged the Judicial Council to fund a study to examine how frequently it occurs.

## Major Themes

Given the background and experiences of the participants, it was not surprising that they were not strong supporters of the guideline and had some negative things to say about the system used to establish a support obligation. Yet, they offered constructive advice about changes they believed would help achieve the goals of keeping both parents involved in the child's life and meeting the best interests of the child emotionally and financially.

Several common themes emerged from the focus group discussions. Some were process issues and some were specific to provisions in the guideline that have created problems.

### *Process Issues Raised by Focus Group Participants*

- ✓ Participants complained that the guideline only deals with the financial side of child support. It does not, in their opinion, consider the emotional side of child support and what it would take for both parents to provide that support. Participants suggested that the time sharing arrangement should be decided by the parents first, before any financial information is exchanged. Only after the time sharing was negotiated would the parents begin looking at the financial arrangement for child support.
- ✓ Participants did not like the adversarial nature of the support hearing, but were not certain about how to improve the process. Some did and others did not have much trust in the family law facilitators whose role as intermediaries could help remove or at least soften that adversarial approach.



- ✓ Court-appointed psychologists and attorneys were seen by participants as exacerbating conflict between the parents rather than helping to minimize it.
- ✓ Almost without exception, participants believed there is a bias in the system toward mothers. They cited numerous examples to illustrate this belief.
- ✓ Some participants believed that judges are not using the guideline appropriately. Some people insisted that judges were using gross instead of net income to set the support order amount. Others cited examples of how an individual county's guideline could result in different order amounts.
- ✓ In the view of participants, there are tremendous barriers (i.e., costs of pursuing an adjustment in court, time involved by the parties, calendar time to get a hearing) to getting support orders adjusted when things change (e.g., change in time sharing, loss of job or other reduction in income; the end of need for child care).

*Guideline Issues Raised by Focus Group Participants*

- ✓ Timeshare: this was viewed both positively and negatively by participants. On the one hand, some participants liked the time share factor because it recognized the importance of having both parents involved in the lives of their children and gave credit for whatever time share each parent had. On the other hand, some participants believed that the time share credit led to arguments between the parents who would each try to maximize their time with the child to get the most advantageous support order.
- ✓ Net v. gross income: participants preferred that the guideline use net income rather than gross income to establish support awards because the parents' actual tax situations are considered.
- ✓ Second families – hardship adjustment: Some participants found it unfair that support orders could increase because of the other parent's decision to have additional children.
- ✓ Add-ons for child care and medical needs: participants believed these should be handled on an as-needed basis and that their inclusion in the support order was unfair because they may only be needed for a short time and once they were in the support order it was difficult to get them eliminated. For example, when child care is no longer needed, why should the support order include an add-on for that expense?

- ✓ Adjustment for visitation expenses: participants believed there was not enough credit given for visitation expenses and that the credit should be made mandatory, especially if the judge orders certain levels and types of visitation (e.g., long distance telephone contact; one parent required to do all the driving for visitation).

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## 2: FINDINGS FROM THE SAN FRANCISCO BAY AREA

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The discussions and interviews with parents in the San Francisco Bay Area were designed to cover the following general issues:

- ✓ How well informed parents are about the child support guidelines,
- ✓ How fair parents consider the guidelines to be,
- ✓ How familiar parents are with potential sources of help to deal with child support issues,
- ✓ How important parents think representation by private counsel is in support matters,
- ✓ What experiences parents have had in establishing support orders without court involvement, and
- ✓ The extent to which parents think child support orders conform to the guideline.

### Parents' Knowledge About the Child Support Guideline

Participants' knowledge level about the child support guideline ranged from totally uninformed to knowing not only what factors are used in determining a support order, but also knowing about the legislation that created the child support system. Some of the participants expressed uncertainty about their knowledge level; they could describe information elicited from them by attorneys or the software used to generate a support figure, but they thought there might be provisions in the guideline not revealed to them. As one participant put it, "I never got beyond that superficial understanding of what I was dealing with."

This and other questions elicited comments reflecting the need for more information or more readily understood information. Two of the participants attributed early trouble they had with the courts to their inability to understand what was expected of them. One ignored correspondence from the district attorney not only because he had no money, but also because he could not understand the documents. Even when he got to a point where he could and wanted to assume his responsibilities, he was discouraged by all the paper work: "They'd ask me a question on this paperwork and I wasn't sure what it meant because I'm not familiar, and that's what discouraged me." The other expressed the same reaction: "It just beats you down, it's been hell."

Although one of the custodial parents was able to complete and file the papers for a support order on her own, it was a lot of work and she found the task daunting. More importantly, she did not know what to expect as she began this process and would like to have been better informed. Her sentiments were echoed by other participants. A noncustodial parent in the focus group provided an example of the dilemma the parents sometimes are in because of their ignorance: income was imputed to him from his retirement account when he was forced to cut back to part-time work. He was concerned that if he resumes full time work as he would like, the new income will be added on top of the imputation rather than replacing it. Thinking back to the time of his marital dissolution, he said, "I really would like to have had a handbook to tell me what the two- and three-letter phrases mean beyond which space is for a number, and to understand how that equation works beyond that one-page bombshell (the form that elicits information for the support order)." He referred to the process as "Russian roulette."

Asserting that most people do not understand the guidelines, another noncustodial parent suggested:

If we all had better knowledge, we could plan accordingly and accommodate our responsibilities for child support. It would serve all concerned to be better prepared, to plan for it as we do for taxes and everything else we do.

### **Fairness of the Guideline**

In general, obligees viewed the guideline as more fair than did the obligors, a couple of whom had done considerable analysis of it. Thus, their responses to the question about fairness ranged from somewhat complicated critiques to more spontaneous and pointed responses.

#### *Custody versus Support*

One of the participating obligors argued, and produced supporting evidence, that the guideline needs to be rethought in a very fundamental way because it increases the likelihood that children will suffer the loss of a parent in case of dissolution of the relationship between the parents. This is because, "The financial incentives for custodial and noncustodial parents are completely different and completely contradictory." He pointed out that the major cost of caring for a child is housing, and that a noncustodial parent has to be able to provide a room for a child in order to get a court to order custody, even for the traditional every-other weekend custody. He estimated the difference in rent between a one-bedroom and a two-bedroom apartment as \$800-\$1,000. Thus, "A guy who wants to be in his kid's life at all has to make an incredible financial outlay to have him be there a day a week." However, "There's no incentive to do that in the support guidelines." The reduction



in support an obligor pays is minimal if the child is in his or her custody only one day a week.

For the custodial parent, however, the guideline provides an incentive to limit the noncustodial parent's time with the offspring to one or two days a week. Referring to analyses he had run on the relationship between the noncustodial parent's time share and the amount of support paid to the obligee, the participant pointed out that it generally is at three or four days a week with the noncustodial parent where a major reduction occurs in the support amount, even though the expenses involved in caring for the child change minimally after one or two days a week. Thus, there is a disincentive for noncustodial parents to have any role in the lives of their children, which is matched by a disincentive for custodial parents to agree to anything approaching equally shared responsibility for children. Acknowledging that many people are able to share custody in spite of the disincentives, the participant asserted that, "An economist would take a look at this and say 'you've set up a guideline that's designed to encourage fighting, that encourages warfare over custody.' You've put the kid, with these guidelines, right in the middle of a battlefield."

An obligee who strongly wished that her daughter had a relationship with her father also proposed a financial incentive for people to participate in their children's lives. She, however, took a different approach, suggesting that obligors who are not involved with their children should pay an additional fee that would enable the district attorney to fund programs designed to educate parents about how important they are to their child's development.

#### *Income of the Two Parties*

Another obligor described ways in which he sees the calculation of support as unfair. After explaining that the incomes of the two parents are aggregated and "split by the amount of time the child spends with each parent," he challenged the reasonableness of the fact that if he and his former wife shared custody of the children 50-50, "I still pay her, go figure!" Also, if she gets a salary increase and therefore needs less support, "my child support goes up, go figure!"

#### *Other Recommendations*

Other thoughts about how the guidelines should be changed focused on specific factors:

- ✓ Cost of living in the Bay Area. The cost of living in the Bay Area was mentioned by virtually all the participants. One custodial and one noncustodial parent felt specifically that the cost of local housing should be reflected in support levels. The noncustodial parent asserted that after paying his support, he was not left



with enough money to pay his basic living expenses and was unable to visit his children who live out of state.

- ✓ Child care costs. One of the noncustodial parents who raised this issue asserted that he was paying twice for child care; that is, it was one of the factors used in setting the support order initially, and in a subsequent revision he was ordered to pay separately for child care. Another noncustodial parent referred to accommodations parents may have to make to care for children that result in reductions in income. His hypothetical case was a salesman who, because of child care responsibilities has less time to devote to making contacts and meeting with potential buyers.
- ✓ Other spouse's income. Noncustodial parents in the focus group split on whether a new spouse's income should be considered in establishing a support obligation. One parent said that it has the undesirable effect of discouraging the establishment of new families, and another argued that the improved economic status of parents should be reflected in support for their children. He also pointed out that support orders are revised only when there is a significant change in circumstances. A custodial parent who did not know if this was a factor said that if it is not, it should be.
- ✓ Support limits. One participant asserted that there should be a ceiling as well as a floor for support amounts. He felt he should not be paying more than was required to feed, cloth, and house his children.
- ✓ Distribution of support. An interviewee said that when the older of his two children reaches the age to be excluded from the support order, his support obligation will only be reduced by one-third rather than the half that he considers more appropriate and fair.

## Resources to Assist Parents

### *District Attorney (DA)*

Two custodial parents had been assisted by staff in district attorneys' offices. One found the staff helpful — they sent a packet of materials to her that she was able to complete by herself, and they helped her file the papers for a support order — and she felt lucky to have the office available to her. The staff there were always willing to talk on the phone without judging her, “even when I expressed anger, or concern, or whatever.” The other custodial parent enlisted the aid of the district attorney's office when the father of her child defaulted on the support order and the result was garnishment of the obligor's wages. She said she did not receive advice or other assistance from the office, which she described as not advising or representing either

party. She described it as “basically a way for us [the father and me] to communicate without talking to each other.”

Most of the noncustodial parents had had direct experiences with district attorneys’ offices, but few mentioned them as sources of help. The one exception was a focus group participant who referred to a specific individual who returns calls from obligors and attempts to answer their questions.

Only one noncustodial parent described ways in which he feels he was treated with disrespect by the district attorney’s staff (“they smirk at you”). The others tended to speak of ways in which, as part of a system, these offices are problems. They understand that many of the problems are related to enormous workloads, but pointed out that the consequences for obligors can be serious.

Neither of the two male custodial parents had yet received support from the mothers of their children. One of them said the district attorney’s office had not been able to find the mother, although they have her social security number and he felt certain she was working.

Two of the focus group participants described problems communicating with district attorneys. Referring to “one of the procedures under Rule 6” that requires “the parties to exchange financial information back and forth so it can be reviewed prior to the court appearance,” one participant told of receiving the other party’s financial information only 1½ hours before he was due in court. He pointed out how little time was allowed for support hearings, which makes it especially important for the parties to be prepared. Thus, in his opinion, the exchange of information should occur well in advance of the hearing.

Another participant described how a member of the district attorney’s office did not elicit relevant income information from him in making decisions, but instead, imputed income to him. He described the office as having “a don’t ask, don’t tell policy” which, in this instance, resulted in a support order for about \$190 more than it should have been. “To correct it cost me \$2,000 in attorney’s fees.”

Both these participants agreed that because “the DA’s office carries the power of the numbers,” meaning that the court usually will rely on the district attorney’s numbers in establishing an order, the difficulty obligors face in giving information or getting it from that office presents potentially serious problems. As one participant stated:

There is a strong partiality and leaning toward the district attorney for information, for calculations, for what’s considered to be acceptable, and what’s not acceptable, and what’s going to play into the [decision] and what’s not.



Although few of the noncustodial parents described feeling persecuted by district attorneys, it was common to hear them describe, in one way or another, how they are put in an adversarial role by them. One of the group members described the adversarial feeling as leading to obligors becoming “on the other side.” In what he felt was an over-reaction to the focus by some politicians on “deadbeat dads,” he said, “We all begin to feel we are part of this net enterprise to gather up the criminal element in society that is irresponsible — that we’re on the other side of the right part of society.” Acknowledging that there are some people who shirk their responsibilities and avoid their obligations, he argued that “99.9 percent of all parents are responsible to their kids by nature. We don’t need the courts to tell us that we have to be responsible for our kids.”

In the adversarial relationship described above, some of the obligors saw the district attorney as representing the obligee, and spoke of how threatened they felt sitting alone in the court while the obligee sat at the other table with an assistant district attorney (or more than one).

I would feel much more comfortable if I thought the DA was representing all parties concerned. At least from the standpoint of fairness in the court, if all parties were equally represented, I think it would be much more effective.

#### *Family Law Facilitator*

The custodial parents were not aware of family law facilitators, but most of the noncustodial parents had had some contact with them. Generally, they described the facilitators as helping them complete forms, but a couple of them added other ways they were helped by a facilitator. One described the facilitator for his county as very helpful and knowledgeable and these characteristics “put you at ease about doing it yourself.” The other, a man who has struggled for two years to turn his life around, described the facilitator as being indispensable to him. He said, “I needed help, and I still don’t believe that I could actually get things done” without her help. When asked specifically what she did for him, he replied:

She lets me know what my rights are, what’s going on, what needs to be done. . . like the questions on the papers. Sometimes I get to thinking they are trick questions but they’re not, it’s just a matter of knowing how to read them and she’s been a big help with that.

He added that he always feels good when he leaves the facilitator’s office.

#### *Child Support Commissioner*

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The only participant who had anything to say about this role spoke of the local commissioner's tolerance and flexibility, and how this is part of the court's response to the fact that people are trying to gain access.

#### *Private Attorney*

Two noncustodial parents who had engaged the services of private attorneys to help with child support issues described them as not helpful and they ended up representing themselves. One seemed to feel he was managing well, while the other's summary of his experiences was, "I did very badly with an attorney and very badly without." Other participants said they could not afford attorneys or had no need for them.

The participants, even those whose experiences with attorneys had not been positive, said that people should be represented if they can afford it or under some conditions. Three people said this would ensure balance or equality of justice. Among the others, one had not felt the need for an attorney because there was no dispute. However, she said, "if he starts to get crazy on me, then definitely yes." Another participant who had been fairly successful handling his own case said that if he felt he were at risk of losing his children — he has them two thirds of the time — he would want an attorney.

#### *Community Agency*

Almost everyone was aware of community law services, which they described as providing representation or other assistance at low cost or free of charge to people who meet the income criteria. None of the participants was helped by such agencies. The only person who contacted one did not qualify for the services because of his income.

#### *Private Agreements*

Two participants had agreements that subsequently had to be revised with the assistance of the court. One participant had an informal agreement with her former boyfriend to share the costs of caring for their child. He became unreliable in providing the assistance and the participant filed for a support order. One participant said his original order was established amicably, but when he fell into arrears with payments, his former wife sought help from the court. Another participant and the mother of one of his children recently agreed to ignore their support order. He buys clothing and other things the child needs and the mother acknowledges these expenditures in writing.

#### **Imputed Income**

Generally, participants expressed confidence that commissioners follow the guideline, but the issue of imputed income raised issues of accuracy and fairness for some of the obligors. “Whether one is represented by counsel or is *pro per* [self represented], there are a lot of questions about what numbers come into play and how they come into play.” For instance, a participant whose business involves distribution of products said the district attorney did not allow him to deduct his travel and auto expenses as part of the formula. These expenses became part of imputed income, resulting in a much higher support order than would otherwise have been the case. He described imputing income as “the tricky part of the court.”

Another obligor told of seeking a reduction in his support order when his level of employment was reduced to three days a week. “In response, the court said ‘well you have a retirement account. If you take that early, you would have an additional \$900 a month income and they imputed it to me.’” By drawing out that money, he incurs a penalty for early withdrawal, as well as the lifetime impact of “losing several hundred dollars a month for the rest of my life.” It also was pointed out that such funds often are invested in the stock market and that the imputed amount is not influenced by market fluctuations and the resulting shifts in the value of the fund. Examples of what participants considered excessively aggressive attempts to impute income include:

- ✓ Rent that a district attorney assumed two sons in college were paying the participant with whom they were living.
- ✓ Money that had been loaned to an obligor by his parents because he could not pay his rent.

One of the participants added that while the court imputed income to him, he had been totally unsuccessful in getting the district attorney or the court to impute income to his former wife based on resources he claimed she did not report. For instance, she lives in the house in which they built an in-law unit that draws \$1,000 a month in rent, but the district attorney would not “raise a finger” to verify that income.

## Other Issues

In the course of the discussions, parents raised issues not directly related to the main study questions. Nevertheless, some of these issues are important and should be considered in a review of the guideline.

### *Modifying the Support Order*

Several obligors described seeking revisions as a “tricky business” that can backfire on one. An example of this was provided by a focus group participant who filed for a reduction in his order. The district attorney accepted two of the three sets of documentation supporting his assertions about his wife’s income, but the judge disallowed them saying the issue already had been decided, calling it a frivolous motion, threatening him with sanctions, and charging him \$2,000.

Another participant who was seeking a revision on the basis of improperly imputed income, focused on the length of time it takes to get a hearing. In the meantime, the support order was in place, but he was not paying. The result is that his credit rating is declining, making it harder for him to get the loans he needs for his business.

#### *The State’s Interest*

The most embittered of the participants characterized himself several times as victimized by the State, which benefits financially from the support he pays. The crux of his argument was that the IV-D program gets incentive payments that are determined by how much support money the program collects from obligors. Asserting that “the State makes money hand over fist,” he sees no reason to expect any change in the child support system even though

The best interest of the child is hurt by the statute. The child is left with a broken home that leaves him/her more likely to drop out of school, be imprisoned for a felony conviction, and be visited with the same social ills that characterize children in single-parent families.

#### *Franchise Tax Board (FTB) Problems*

In a discussion of ways in which the child support system creates extra work and cost for everyone involved, members of the discussion group turned their focus to the speed with which the FTB moves to attach assets. According to one of them, if a payment was late or posted to the wrong account, “all of a sudden you’re not in compliance and that triggers all sorts of responses and when that happens it means trouble for us.” As an example, he referred to inaccurate reports to credit agencies, which the individual is unable to change. “You just wither away. Your ability to provide becomes less as time goes on.”

Another member of the group said that at one point he was paying more than 50 percent of his income and was assured that the FTB would not attach his assets or wages. When he got a second job, the FTB immediately took what was in his bank account causing checks to bounce — even though he was not in arrears. In addition, he could not get the loan he needed to get him through the lean period because there



was an FTB hold on his account. His characterization of the situation was, “They shot themselves in the foot and me in the back.”

### 3: FINDINGS FROM SAN DIEGO

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Much of the discussion at the focus groups held in San Diego and in the personal interviews centered around problems parents had experienced with the guideline, mostly in their application, and on recommendations for changes to the guideline parents believed would address those problems. Although the discussions did touch on the three issues of specific interest to the Judicial Council — the use of net v. gross income as the base from which to establish an order, and changes needed to the low income adjustment and the adjustment for second families — most participants were not familiar with the low income and second family provisions and they had very few comments about the income base except that it should not be changed to gross.

This section first identifies the problems parents have with the guideline. It then moves to recommendations they made for improvements. This includes the major issues that were the focus of this study as well as other issues parents would like to see changed.

#### Support Order Levels

An almost universal opinion among participants was that the child support guideline yields support amounts that are too high. Time and time again, parents complained that the child support guideline calculation yields order amounts that leave noncustodial parents impoverished.<sup>47</sup> As a result, they are not able to have the same quality of access they would like to have. For example, parents believed they should be left with sufficient income after child support to house the children properly when they come to visit and pay for variable expenses associated with access, like food, transportation and entertainment. In their opinion, if it is important to have both parents meaningfully involved in the child’s life (e.g., to the child’s mental and emotional health, educational achievements), then both parents need to have sufficient resources to make that happen. They see the child support system as structured to give undue advantage to the custodial parent.

The survey that was administered prior to the group discussions asked participants for their opinions about the fairness of the California child support obligation amount to them, to the other parent, and to their children. This information, as well

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<sup>47</sup> Several parents had been through bankruptcy proceedings, which they claimed was a direct result of the high child support payments they had to make and an order-adjustment process that was too long and too costly. They suggested that the California Judicial Council fund a study of noncustodial parents and the frequency with which they declare bankruptcy. They believed that noncustodial parents experience bankruptcy at higher rates than the general population because of child support payments.



as information from some parents who participated in the San Francisco Bay Area focus groups, is displayed below in Exhibit VII-1.

Exhibit VII-1 Perceived Fairness of the Child Support Guideline (Average rating) <sup>1</sup>			
How fair or unfair do you believe the child support amount is...	Focus Group Location		TOTAL (n=22)
	San Diego (n=16)	San Francisco Bay Area (n=6)	
To you?	1.25	1.60	1.27
To the other parent?	2.90	3.70	3.16
To your children?	1.92	1.20	1.72

<sup>1</sup> Average (mean) ratings are computed using a 4-point scale where 4=very fair, 3=fair, 2=unfair, and 1=very unfair. Thus, the higher the average rating, the fairer respondents believed the guideline to be. Averages exclude respondents who did not answer or who did not know how to rate the question.

The data shown in Exhibit VII-1 are average (mean) ratings computed using a four-point scale where 1=very unfair, 2=unfair, 3=fair, and 4=very fair. Thus, the *higher* the average rating, the *more fair* parents believed the child support amount was to them and their children. Conversely, the *lower* the average rating, the *less fair* parents believed the support amount to be. A rating of 2.5 would suggest that parents did not see the support amount as either fair or unfair.

Overall, parents gave an unfair average rating (i.e., ratings averaging less than 2.0) of the child support amount to them and their children. They gave a somewhat fair average rating for the child support amount to the other parent. Thus, while parents generally believed that the guideline results in awards that are somewhat fair to the other parent (average rating = 3.16), they believed the support amounts are mostly unfair to them (average rating = 1.27) and their children (average rating = 1.72). These ratings are not unusual given that the vast majority of participants who completed the surveys were noncustodial parents and believed that the support amounts were much too high.

The major reasons parents believed the guideline is unfair are:

- ✓ Add-ons: parents believed that economic data on the cost of raising children includes the costs of medical support, child care and other expenses (e.g., education expenses). Yet, these are add-ons to the basic support calculated from the guideline formula. Parents perceive they are being double-billed.
- ✓ Visitation expenses: although parents recognized that the guideline allows an adjustment to the support amount to accommodate the costs of visitation, they claimed that judges do not make those adjustments. They also argued that the

adjustment should include other costs, such as the costs for housing (e.g., even with modest visitation, the noncustodial parent must have bedrooms for the children), for long distance telephone calls, and for variable expenses associated with visitation (e.g., food, entertainment). Some parents claimed that judges would order a certain level of visitation and make one parent responsible for all the travel and then not adjust the order to reflect the costs associated with that travel.

- ✓ Cost of living: parents mentioned that the cost of living varies tremendously among California counties. In particular, they cited the high cost of housing in major urban areas (e.g., San Diego, San Francisco), which is the major expense item in a household budget. They believed the guideline needs an adjustment mechanism that recognizes cost-of-living differentials among counties.

## Time Sharing

The most frequently mentioned complaint about the guideline and the one that seemed to create the most problems for parents was time sharing. Parents liked the fact that support order amounts decrease as time sharing with the noncustodial parent increases. They did not, however, like that they have to fight for equal time sharing. They complained that judges look at 20 percent time share with the noncustodial parent as the norm and anything above that as exceptional. They believed the time share norm should be 50-50 and that parents should make adjustments from that base considering what is in the best interests of the child.

A few parents asked about the age-adjusted, time sharing guidelines that are specific to certain California counties. At least two counties were cited as having their own time-sharing guideline — a parent provided a copy of the Orange County guideline — that allows very little time sharing when the child is young and more as the child ages. Parents viewed these time-sharing guidelines as discriminatory and reflective of a gender bias that they believe is endemic throughout the court, from the family law facilitator to the judge making a final decision about the amount of support.

Another time sharing issue for parents was denial of access by the custodial parent. Many participants complained that custodial parents did not live up to the time sharing agreement assumed by the support order. Parents shared some stories about being denied access when they went to pick up the child, the custodial parent kidnapping the child, the custodial parent moving out of state with the child, and custodial parents filing allegations of child abuse (all unfounded) to restrict access even more. Parents also reported that when they went back to court to enforce access, the courts did not sanction the custodial parent and did not put additional restrictions on the custodial parent to help enforce the time sharing. Noncustodial parents expressed an interest in having some mechanism or options to enforce the time sharing arrangements (e.g., fines, jail time, reduction in the custodial parent's

time share, temporary reduction in child support). The following quote from one parent captures the views of many others.

Child support is a ransom for the right to visit the child. But, because there is no enforcement of that right, the noncustodial parent often is left paying the ransom without getting the reward.

## Net v. Gross Income

Parents overwhelmingly favored leaving net income as the base that the guideline uses to compute a support order. Like respondents to the guideline user survey, parents believed this is a fairness issue; that the situation of each individual must be looked at and a support obligation cannot be computed without taking the tax consequences and parent's expenses into account. Parents appreciated how the use of gross income might be easier for judges to use as an income base, but they argued that simplicity and fairness do not always go together when dealing with money issues.

A more important issue to parents than whether the income base for the guideline formula should be net or gross income, was what the court counted as part of gross income. Among the income that parents did not believe should be counted, but apparently was counted in their situation was:

- ✓ One-time bonuses (i.e., those that cannot be counted on to occur at some regular interval);
- ✓ Overtime income where the overtime was not guaranteed and did not occur on a regular basis;
- ✓ Income from a second job, especially when the only reason for taking the second job was to pay child support and make ends meet;
- ✓ Stock options that have not been exercised and where there is no receipt of income; and
- ✓ Income from a prior, higher-paying job; that is, imputing a higher income to noncustodial parents than they are currently earning.

Income parents felt should be counted but was not, included:

- ✓ Welfare payments to the custodial parent;
- ✓ Income from a new spouse/partner where that income is the reason that the custodial parent does not work;
- ✓ Income from gifts/inheritances (e.g., gifts from parents that occur regularly); and
- ✓ Child support receipt.



In short, parents realized that if someone is salaried, what is counted as income is fairly straightforward. It is the self-employed worker and non-salary income that is problematic.

## Recommendations for Change

The changes parents recommended making to the guideline are listed in Exhibit VII-2 below. They directly reflect the problems and issues parents expressed about the guideline based on their experience. Not all the recommendations relate directly to the guideline, however. Some parents asked for changes to the entire system by which child support orders are established and enforced. These recommendations included the following ideas:

- ✓ Judicial discretion. Some parents said they *never* see judges deviating from the guideline and others said they saw it *frequently*. The consensus was not that discretion should be increased or decreased, but that judges should be required to document their findings so that parents know the basis of the ruling. Some parents said they had returned to court to look at their case file only to find many documents missing and no explanation of why the judge made certain decisions.
- ✓ Parent feedback about support orders and the court experience. Parents recommended that the Judicial Council get systematic feedback from parents about the support order *after* the process was complete and the order had been entered. They suggested that a short paper survey be included with the court order that parents could return. A second option mentioned was to have the court order include a reference to a web site where parents could complete a survey or simply relay their comments. Parents further recommended that all comments be sent to an independent third party for analysis rather than back to the court.
- ✓ Review case files. Parents recommended that the Judicial Council routinely review case files to ensure that judges are following the guideline and if they are not, that they list clearly the reasons they did not follow it.

**Exhibit VII-2**  
**Parents' Recommendations for Changes to the**  
**California Child Support Guideline**

Issue	Recommendation for Change
Net v. gross income	<ul style="list-style-type: none"> <li>• Leave net income as the base for computing a support obligation</li> <li>• Review what is counted in gross income and eliminate income from bonuses, overtime, second jobs</li> <li>• Stop imputing higher income to noncustodial parents than they have available based on their current circumstances</li> <li>• Count child support as income to the custodial parent</li> <li>• Allow more expenses (e.g., cost of housing/rent) to be deducted from income</li> </ul>
Child support is too high	<ul style="list-style-type: none"> <li>• Reduce the "K" factor in the guideline to some more reasonable level (it was lower in the past than it is now)</li> <li>• Put a cap on the amount of child support a noncustodial parent has to pay, especially in high income cases</li> </ul>
Time sharing	<ul style="list-style-type: none"> <li>• Have a presumption of 50-50 time share between the parents, unless there are extraordinary circumstances that mandate a different arrangement</li> <li>• Include a time sharing enforcement provision in the guideline (e.g., specify sanction options for visitation denial)</li> <li>• Make the adjustment for visitation expenses mandatory and be more liberal in what is counted as visitation expenses (e.g., travel, long distance telephone, meals, clothing, entertainment), especially if the judge mandates them</li> </ul>
Add ons	<ul style="list-style-type: none"> <li>• Split the cost of all add-ons 50-50 between the parents</li> <li>• Require both parents to submit verification of the costs for add-ons</li> <li>• Set up a child trust account where costs for add-ons would be reimbursed based on actual expenses</li> <li>• Review the guideline to ensure that child care, medical, education, and other add-on costs are not already included in the basic calculation of child support</li> </ul>
Second families	<ul style="list-style-type: none"> <li>• Goal should be to treat all children equally. The children in a second family deserve to be treated the same as prior-born children.</li> <li>• Increase the hardship deduction amount and make it easier to get</li> <li>• A hardship deduction should not result in increasing the support obligation of the noncustodial parent</li> </ul>
Cost of living	<ul style="list-style-type: none"> <li>• Include an adjustment for cost-of-living differentials among California counties, especially for housing</li> </ul>
Adjustment process	<ul style="list-style-type: none"> <li>• Establish an easier, less costly, faster process for changing the support order when necessary (e.g., loss of job, disability)</li> <li>• Allow more flexibility to change the order amount when circumstances change (e.g., change in time sharing)</li> </ul>



- ✓ False allegation law. Several parents had experiences where the custodial parents made false statements or allegations that negatively affected the noncustodial parent. Among others, this included child abuse allegations that were unfounded, and claims of add-on expenses (e.g., child care) that were never incurred. Parents believed there should be consequences associated with these false allegations and believed that some statement in the guideline about the penalties for making false allegations might prevent these allegations from occurring in the future.
- ✓ Custodial parent accountability. Although parents want to support their children, they believe that custodial parents are using child support money inappropriately to take vacations or support new partners. Parents want some way to hold the custodial parent accountable for how they spend child support.
- ✓ Accounting for child support payments. National studies report statistics on compliance/noncompliance with child support payments based on interviews with custodial parents, both custodial mothers and fathers. Focus group participants believed these statistics create a misimpression about noncustodial parents, who they believe have much higher compliance rates than the national statistics suggest. They recommended that the Legislature include a line on the state income tax form that asks parents to report the child support they have paid in the previous year.<sup>48</sup> They believed this would have a powerful impact on changing the perception about “deadbeat” dads.
- ✓ Time sharing and child support. Parents recommended that the issue of time sharing be resolved first, before discussing the financial issues. They believed this would reduce some of the conflict between the parents that now occurs because each parent seeks to maximize time share to their monetary advantage.

Parents also requested that the state establish a visitation enforcement office where noncustodial parents could get some satisfaction when they are denied visitation.

- ✓ DISSOMASTER. A couple parents expressed frustration that the DISSOMASTER does not print an itemized list of deductions that were included in the calculation of net income. They asserted that their own calculations of net income were very different, but they had no way of challenging the DISSOMASTER calculations because they could not tell what was included/excluded in the calculation.

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<sup>48</sup> Some parents reported that the Legislature considered requesting this information on the state income tax form, but did not pass the bill that would have required it. They would like to see the Legislature reconsider this issue.

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## 4: SUMMARY

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The focus group discussions and interviews yielded a rich set of parental perspectives about the child support guideline as a tool for calculating a support obligation and for defining an approach to complete that process. They also provided some insight into problems parents have using the guideline provisions to meet their specific circumstances and ideas for effecting changes that would make the guideline more useful to them. This section summarizes some of the key findings from the discussions and interviews. The findings have been organized into the following three broad categories:

- ✓ Level of support orders
- ✓ Effect of support order structure on time sharing
- ✓ Adversarial nature of the system

### Level of Support Orders

National studies that include parental opinions about the level of child support orders routinely indicate that, in general, obligees believe the support amounts are too low and obligors believe they are too high. Given this information, it would be easy to dismiss the almost universal complaint expressed by parents in the focus groups and interviews that support levels are too high because the vast majority of the participants were obligors. Nevertheless, there are several reasons why this issue should be seriously considered. One is that a majority of guideline users (60%) who were surveyed believed that support orders are too high and are unfair to both parents. Another is the charge from focus group participants that men paying child support are at high risk for bankruptcy. If obligors cannot pay the support obligation because they lack the means to do so, they may stop paying altogether and withdraw from the lives of their children. These outcomes do not benefit anyone. Thus, this issue deserves greater attention than has been given to it in the past.

Many of the focus group participants attributed the excessive support levels to specific provisions included (or not included) in the guideline and/or how those provisions are implemented. Some specific areas for further investigation recommended by the findings here include:

- ✓ Cost of living. Should there be a factor built into the guideline formula for variation across the State in the cost of living so that the support required for a child living in a rural, low-cost area would be less than that required for a child living in a high-cost urban area?



- ✓ Income base used to calculate support. Using the past two years' income plus current salary is a reasonable income base to use in most cases. However, how should unusual income streams (e.g., year-end bonuses, overtime pay) be counted? And if that income is counted, should the guideline not also consider reversals of fortune, such as income loss through layoffs, seasonal employment, or a reduction in the amount of overtime? The testimony from obligors in the focus groups was that while unusually high income in a year was incorporated into the child support calculation, unusual reductions in income are not. In fact, they claim that people who use the guideline to establish a support order impute income to parents that have an unusual reduction in income.
- ✓ Imputed income. The imputation of income appears not only to be a potential source of abuse, but of error. The need for a policy that allows decision makers to impute income in certain situations is clear, but perhaps it should be accompanied by (a) a procedural rule stating that where income figures include imputation, a hearing may not take place until the parties have had each other's figures in their possession long enough to document any dispute; and (b) instruction that income be imputed equally to obligees and obligors.
- ✓ Double billing. Obligor believe the guideline formula is based on economic data that includes *all* the costs of raising a child. They therefore believe that add-ons to the basic support amount for such items as child care costs, constitute double billing. If this perception is not true, then the guideline should perhaps include a discussion about this issue. If it is true, perhaps some adjustment to the support formula is warranted.

## Support Order Amounts and Time Sharing

There was almost universal agreement that a child should have access to both parents and that both parents should be actively involved in the child's life. This assumes that access is feasible and there are no indications that access would be harmful (e.g., fear of abuse). Many of the men who participated in the focus groups described how difficult it was to get access, either because the other parent denies or interferes with access, or because the child support order restricts access.

Some factors parents mentioned that limit access include:

- ✓ Time sharing and child support. The support order calculation is dependent on the incomes of the parents and the time each parent spends with the child. All else being equal, the support amount declines as the parents approach equal time with the child. As a result, obligors interested in minimizing their support obligation may seek to increase their share of time with the child. Obligees interested in maximizing the support obligation would seek to minimize the obligor's share of time with the child. Focus group participants saw this as



creating inherent conflict between the parents. They suggested that before any income information is exchanged, parents should agree on the time sharing arrangement. Only then should income information be introduced and the guideline formula be used to establish a support obligation.

- ✓ Preference for women as custodial parents. Focus group participants believed there is a bias in the system toward awarding women primary physical custody of the children. As an example of this bias, they claimed that some counties have special guidelines that limit the male noncustodial parent's access to the child based on the child's age.
- ✓ Access enforcement. Noncustodial parents complained that there is a lack of interest on the part of family law courts in enforcing access arrangements. They argued that the courts are quick to enforce support order agreements but do nothing to enforce access. They recommended that courts be given the authority and the tools (e.g., fines, jail time) to enforce access. They believe that if the courts sanction custodial parents who deny or interfere with access, the incidence of such interference will decline.

### **Adversarial Nature of the System**

A third major theme running throughout these discussions was the adversarial nature of the system. Termination of an intimate relationship was likely to occur because the partners already are engaged with each other as adversaries and, as several participants pointed out, the adversity gets played out in and exacerbated by support order levels and custody. In the focus groups and the interviews, participants talked about how the structure of the family law court system enhances the adversarial nature of the dissolution of families. As a support enforcement agency, the district attorney's office has a lot of experience with obligors who are not responsible and who do not comply with court orders. Thus, the people in these offices are likely to have a skewed set of expectations about the character or intention of obligors, as a class, that gets reflected in their interactions with them (e.g., not being responsive to obligors seeking information). More importantly, when they are helping potential obligees prepare documents to establish, modify or enforce support orders, those expectations may be reflected in zealous imputation of income to and assumption of a protective stance toward obligees.

Assistant district attorneys (ADAs) appear in court with many obligees and respond to commissioners' questions or requests for information. It is easy to see why obligors, particularly those who represent themselves in court, tend to see the ADAs as representing the obligees and view the system as biased against them. This may especially be true among obligors who are not well educated and not confident of their own abilities to understand the guideline and the child support system. Facilitators, who generally have been of great help to indigent obligors, are not seen



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as very helpful to those who are better situated and informed, but still not able to afford the cost of private attorneys.

### **Additional Issues**

Seeking an adjustment to the support order was reported by participants as costly in terms of (a) the money involved, (b) the personal time required to pursue the adjustment, and (3) the calendar time required to get a hearing. Furthermore, participants reported that re-opening the case was risky because it gives the other parent an opportunity to counter the request for downward adjustment with one for upward adjustment or an opportunity for a commissioner to alter the order in some other way. Participants argued for a more streamlined adjustment process so that support orders could be revised when circumstances change (e.g., an obligor loses his/her job, there is no more need to pay for child care).

The need for more information about the guideline and support process was a theme in the Bay Area. Participants there were not members of advocacy groups and most had not “studied” the guideline. Their focus was less on the specifics of the guideline factors, which they seemed aware of and comfortable with, than on the process used to establish a support order. A couple participants recommended that someone prepare a guide to the process to help parents understand how the system works.

Finally, the aggressiveness of the Franchise Tax Board was viewed as burdensome to the system as a whole as well as to obligors. The charges that this agency frequently creates situations that require time and effort in multiple agencies to correct probably could be documented or dismissed with an independent audit at reasonable cost.